17

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 1123

J. WESLEY GLASGOW, APPELLANT,

vs.

WILLIAM H. MOYER, WARDEN OF THE UNITED STATES PENITENTIARY AT ATLANTA, GEORGIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

FILED MAY 2 [illegible], 1912.

(23199)

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1 In United States District Court for Northern District of Georgia.

In re J. WESLEY GLASGOW, Petitioner.

The clerk will please incorporate the following papers in the record on appeal.

1. Petition, and order to file in forma pauperis.
Exhibits.
Waiver of Rule, Nisi and appearance.
Stipulation of Counsel.
Judgment.
Opinion of Court.
Order for appeal and order thereon.

JNO. C. FAY,
Attorney for Petitioner.

Service of Copy admitted this 6th day of April, A. D. 1912.
F. C. TATE,
Attorney for Respondent.

Filed in Clerk's Office April 6, 1912.
O. C. FULLER, *Clerk.*

2 In United States District Court for Northern District of Georgia.

In re J. WESLEY GLASGOW.

Petition for leave to apply for Writ Habeas Corpus in Forma Pauperis.

J. WESLEY GLASGOW, being duly sworn, says that he is now confined unlawfully in the United States Penitentiary in Atlanta, and that he is without means to pay the necessary expenses for procuring a writ of habeas corpus to enable the cause of his detention to be inquired into, that all his property personal was seized by the United States upon his arrest and has not been restored to him.

Wherefore, he prays the Court to permit him to apply for a Writ in Forma Propriis, as by law provided.

J. WESLEY GLASGOW.

Subscribed and sworn to before me this 21st day of March, 1912.
[SEAL] FRANK ROGERS,
Notary Public,
Fulton Co., Georgia.

Filed in open Court March 22, 1912.
O. C. FULLER, *Clerk.*
By J. D. STEWARD, *Deputy Clerk.*

Order.

March 22, 1912. Let the petition be filed in forma pauperis.
WM. T. NEWMAN,
United States Judge.

3 *Petition for Writ of Habeas Corpus.*

In United States District Court for Northern District of Georgia.

In re J. WESLEY GLASGOW.

Petition for Writ of Habeas Corpus.

To the Honorable W. T. Newman, Judge of the United States District Court for the Northern District of Georgia.

The petition of J. Wesley Glasgow of Evanston, Illinois, now incarcerated in the United States Penitentiary at Atlanta, Georgia, within the jurisdiction of this Honorable Court and unlawfully deprived of his liberty by one Wm. H. Moyer, warden of said Penitentiary, respectfully represents:

That on or about the 21st day of July, A. D. 1911, while he was temporarily in the city of Wilmington in the District of Delaware, he was unlawfully arrested by one Hugh H. McBride, a policeman of the said city, charged with peddling books without a license, and was discharged from said arrest, because the act charged was not forbidden by law, that he was immediately rearrested charged with offering to sell an obscene book and was taken before the Municipal Court and there at first convicted and sentenced to pay a fine of five dollars, and immediately in a few moments thereafter the judgment was remitted, as more fully appears by references to a certified copy of said proceedings filed herewith, marked Exhibit A and prayed to be read as part hereof.

That immediately he was rearrested upon the oath of John J. Purcell, a policeman of the city of Wilmington, charging him with having deposited an obscene book in the United States Mails, a copy of the warrant being hereto attached marked Exhibit B, and taken before Wm. G. Mahaffy, a United States Commissioner in and for the District of Delaware, who committed him on the 25th day of July, 1911 to the
4 custody of one L. Crawford, warden of the Newcastle County, Delaware, Workhouse, to await the action of the Grand Jury in default of $2500 bail, a copy of said proceeding being hereto attached marked Exhibit C, prayed to be read and considered as part hereof.

That on the 21st day of July, 1911, by order and direction of John P. Nields, United States Attorney for the District of Delaware, his rooms in the "Preston," where he was residing, were visited by a policeman and United States Marshal, and without any warrant or other lawful process, every vestige of his personal property, including his books, papers, wearing apparel, laundry, toilet articles were seized and taken possession of and carried off and deposited within the United States Court House, situate upon a United States reservation in the State of Delaware—and your petitioner's trunk which was in the custody of the United States Express Company was likewise seized by the United States Attorney and your petitioner deprived of every vestige of his property except the clothes on his back, and immediately on his arrival at the workhouse, July 25, 1911, before conviction or even indictment, he was stripped of the clothes on his back and was dressed in prison garb, and harsh prison rules enforced against him, to wit, viz: His letters to counsel were suppressed.

He was deprived of receiving or reading the newspapers, of, receiving food or clothing, all his letters sent or received were opened and read by the warden, Crawford, a most brutal man. He was fed on unwholesome prison fare, frequently uncooked and mouse eaten. All of which will more fully appear by reference to the annexed affidavits of A. P. Stevenson and John C. Fay, the printed regulations in force marked respectively Exhibits D, E, F, and G, copy of current newspapers, describing the lashings given prisoners by said Crawford, prayed to be read and
5 considered as part of this petition.

That he was confined in this prison, under these rules awaiting the action of the Grand Jury from the 25th of July to the 16th of October, 1911, when a Grand Jury summoned from jurors selected by Wm. G. Mahaffy as jury commissioner, the identical person who as United States Commissioner had committed him, returned an indictment into the United States District Court, charging him with depositing an obscene book in the United States mail, which was delivered to the same, identical Wm. G. Mahaffy, who in a third capacity as clerk of the United States District Court filed the same, all of which will more fully appear by reference to a certified copy of said indictment filed herewith, marked Exhibit H, and prayed to be read and considered as part hereof, and he was the next day without knowing the contents of the indictment or having seen a copy taken and arraigned, before E. G. Bradford, in his prison clothes.

Your petitioner further shows that notwithstanding said indictment charged no offense against the laws of the United States, and the same was couched in such vague and uncertain language that it did not apprise him of the offense, both of which defects he brought to the attention of the Honorable Edward G. Bradford, Judge of said Court, by pleas to his jurisdiction, demurrer, motion to quash, all of which pleas, demurrers and motion were by him overruled and your petitioner was placed upon trial before a jury chosen from jurymen selected by said Wm. G. Mahaffy, although the array was challenged for said cause and the number of peremptory challenges prescribed by law were not allowed him, he was forced to trial notwithstanding papers material to his defence were in the possession of and withheld by the United States Attorney with the knowledge and acquiescence of the Presiding Judge,
6 that said Judge refused to permit a dedimus potestatum to issue to take the testimony of non-resident witnesses residing more than 100 miles from the city of Wilmington, and refused to allow witnesses residing within 100 miles to be summoned, and under instructions of the Court, said jury was constrained to return a verdict of guilty, all of which more fully appears by reference to the affidavit of John C. Fay, Chas. C. Miller, Minutes of Court and Docket Entries filed herewith, marked Exhibit I, prayed to be read and considered as part hereof.

That after verdict your petitioner filed motion in arrest of judgment and for a new trial, which motions on the 2d day of January, 1912, were pending in said Court, and hearing thereon had been fixed by said Edward G. Bradford to be heard on Saturday, January 6, 1912, before himself, all of which will more fully appear by reference to a certified copy of the docket entries and minutes of said Court filed herewith marked Exhibit K, and prayed to be read and considered as part hereof, and to copies of said motions filed therewith.

That the said Edward G. Bradford having exhibited during said trial a deep seated prejudice against your petitioner and a violent partiality in favor of John P. Nields in his rulings, your petitioner in good faith and as by law he was entitled to do, on the 2d day of January, 1912, filed in said Court and delivered the same to the said Wm. G. Mahaffy, clerk of said Court in his office; and upon said Mahaffy's demand paid to him his lawful fees for filing the same, an affidavit charging said Edward G. Bradford with prejudice, an application to have the same certified to the senior Circuit Justice then present in the Circuit which was Honorable George Gray, Judge of the United States Circuit Court of Appeals for the 3d Circuit, together with the required certificate of counsel, as required by law, all of which will more fully appear by reference to a
7 carbon copy of the same and the affidavits of John C. Fay attached hereto, marked Exhibit L and prayed to be read as part hereof.

And your petitioner says, that upon the filing of the same, by the operation of the Act of March 3, 1911, which went into operation January 1, 1912, the said Edward G. Bradford became and was disqualified to further proceed in said cause, and any further action by him taken or attempted to be taken was without jurisdiction, coram non judice, unlawful and absolutely null and void.

But, notwithstanding, the said Bradford did unlawfully and in violation of the commands of the statute on the 6th day of January, 1912, did bring your petitioner before him and then and there direct and forbid the clerk of the Court to enter of record the said affidavit, application or certificate of counsel and did forbid the clerk to certify the same to the senior Circuit Judge of the 3d Circuit, and did then and there, against the protest of your petitioner's counsel, proceed to overrule the said motions for new trial and in arrest of judgment and against the protest of your petitioner, proceeded to pronounce a judgment against petitioner, sentencing him to confinement in the Penitentiary at Atlanta, Georgia, for a term of fifteen months from the 6th day of January, 1912, and to pay a fine of $500 as fully appears by reference to certified copy of minutes filed herewith, marked Exhibit M.

That immediately said Bradford placed your petitioner in the custody of Ralph I. Flynn, the United States Marshal, and he together with the assistance of one Mitchell, a deputy United States Marshal, by force imprisoned him in the United States Marshal's office from about 1 P.M., of January 6, 1912, and without permitting him to return to the workhouse to get his personal property there; at midnight of said day spirited him away by a circuitous route to Atlanta, taking passage by train to Cape Charles City, Virginia, and by boat to Norfolk, Virginia, where
8 he was imprisoned all of the next day, Sunday, and from thence without supplying him with food, and manicled, nor permitting to purchase it himself, arriving at Atlanta on the evening of January 8, 1912, and delivered him under said unlawful order of said Bradford to the custody of W. H. Moyer, and where he now is and has ever since been confined. Copy of Commitment being herewith attached marked Exhibit N, prayed to be considered as part hereof.

Your petitioner further shows that by the unlawful action of said Edward G. Bradford your petitioner not only is now unlawfully imprisoned, but by his refusal to certify said application, affidavit and certificate of counsel to the senior Judge of the Circuit Court of Appeals,

there is now no Judge of the United States District Court of Delaware, and no one there authorized to pass upon his motions in arrest of judgment or motion for a new trial, or competent to sit and certify to the exceptions reserved by him to the many errors committed by said Judge Bradford during his trial, or to permit him to have the same reviewed and set aside by any appellate tribunal.

Wherefore, your petitioner prays to grant to him a writ of habeas corpus directed to the said Wm. H. Moyer commanding him to produce the body of your petitioner before you on some short day certain to be named in the writ, to the end that your petitioner may be discharged from said unjust and unlawful imprisonment, and that he be forthwith restored to his liberty—or show cause to the contrary.

And your petitioner will ever pray.

J. WESLEY GLASGOW.

Northern District of Georgia,
Fulton County.

Sworn and subscribed before me this 21st day of March.

[SEAL] FRANK ROGERS,
Notary Public.

Filed in Clerk's Office 22d day of March, A. D. 1912.
O. C. FULLER, *Clerk.*
By J. D. STEWARD, *Deputy Clerk.*

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EXHIBIT A.

Municipal Court No. 28, July Term, A. D. 1911.

The Mayor and Council of Wilmington
vs.
J. Wesley Glascoe.

Complaint and Oath of William Hall charging J. Wesley Glascoe with offering for sale obscene book, containing lewd and obscene words. In the City of Wilmington, New Castle County, State of Delaware on the 20th day of July, A. D. 1911. Contrary to an Ordinance of the said City.

No warrant issued. July 20, A. D. 1911 John C. Purcell and Hugh McBride City Constables make return Cepi Corpus.

Information Filed Friday July 21, A. D. 1911.

July 21, A. D. 1911 9 A.M. The defendant arraigned and plead not Guilty and now, to wit; this 21st day of July A. D. 1911 the defendant being present after hearing all the evidence for the Mayor and Council of Wilmington and the defendant the Hon. Harry P. Joslyn, Deputy City Judge of the Municipal Court adjudged the defendant Guilty and sentence to pay a fine of five dollars and costs of prosecution and in default of payment to be committed to the said The Board of Trustees of the New Castle County Workhouse for 30 days at labor at some suitable employment, eight hours each secular day, unless physically disabled, the said commitment commencing on the 21 day of July A D 1911 and ending on the 9 day of September 1911 and he was committed to the custody of the High Constable until the sentence be carried out.

[SEAL] LEWIS LASSE, *Clerk of the Municipal Court.*

This is to certify that the above is a full and true copy of all the docket entries of the Municipal Court for the City of Wilmington in the case of The Mayor and Council of Wilmington vs. J. Wesley Glascoe.

LEWIS LASSE,
Clerk of the Municipal Court.

Costs. Costs below 1.25, Filing Information .25, Arraigning defendant .25, Solicitor's fee 2.00, Entering Judgment .50, Commitment .10, Witness Fees 1.00, Fine 5.00, Total 10.35.

Witnesses; William Hall. John Toner. John C. Purcell. Hugh McBride. Committed July 21, 11. Fine & Costs Remitted by order of Harry P. Joslyn, Deputy City Judge July 21, 11.

10 EXHIBIT B.

UNITED STATES OF AMERICA }
DISTRICT OF DELAWARE } *ss.*

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To the United States Marshal for said district,

GREETING:

WHEREAS, complaint on oath hath been made to me charging that John Wesley Glasgow alias J. Wesley Glasgow late of the City of Wilmington, in the district of Delaware, at the district of Delaware aforesaid, on or about the twentieth day of July, A. D. 1911, did then and there knowingly and feloniously deposit and cause to be deposited in the Post Office of the said United States, at the said City of Wilmington, in the said district of Delaware, for mailing and delivery by the Post Office establishment of the said United States, a certain obscene, lewd, lascivious and filthy book, pamphlet, writing, print and publication of an indecent character, bearing on the outside cover thereof the words "Sexual Science," and containing one hundred and fourteen printed pages, of too great length and of too indecent character to be here set forth in full, and which said obscene, lewd, lascivious and filthy book, pamphlet, writing, print and publication of an indecent character was then and there enclosed in a paper wrapper bearing the address "Mr. Frank Wolf, 1215 Court Street, Scranton, Pa. Printed Matter," in violation of section 211 of the Act of Congress approved March 4th, 1909, and contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the said United States.

11 NOW, THEREFORE, you are hereby commanded to apprehend the said John Wesley Glasgow alias J. Wesley Glasgow, and bring his body before me forthwith to answer said complaint and to be dealt with according to law for said offense.

WITNESS my hand and seal this twenty first day of July, A. D. 1911.

(Sgd.) BARNET GLUCKMAN, J. P. [SEAL]

12 UNITED STATES OF AMERICA }
DISTRICT OF DELAWARE } *ss.*

On this 21st day of July, A. D. nineteen hundred and eleven, personally came the undersigned Justice of the Peace of the State of

Delaware in and for New Castle County John C. Purcell, who being by me duly sworn according to law deposes and says, that one JOHN WESLEY GLASGOW alias J. WESLEY GLASGOW, late of the City of Wilmington, in the district of Delaware, at the district of Delaware aforesaid on or about the twentieth day of July, A. D. 1911, did then and there knowingly and feloniously deposit and cause to be deposited in the Post Office of the said United States at the said City of Wilmington, in the said district of Delaware, for mailing and delivery by the Post Office establishment of the said United States, a certain obscene, lewd, lascivious and filthy book, pamphlet, writing, print and publication of an indecent character, bearing on the outside cover thereof the words "Sexual Science" and containing one hundred and fourteen printed pages, of too great length and of too indecent character to be here set forth in full, and which said obscene, lewd, lascivious and filthy book, pamphlet, writing, print and publication of an indecent character was then and there enclosed in a paper wrapper bearing the address "Mr. Frank Wolf, 1215 Court Street, Scranton, Pa. Printed Matter," in violation of section 211 of the Act of Congress approved March 4, 1909, and contrary to the form of the act of Congress in such case made and provided and against the peace and
13 dignity of the said United States.

(Sgd.) JOHN C. PURCELL.

Subscribed and sworn to before me this twenty first day of July, A. D. 1911.

(Sgd.) BARNET GLUCKMAN, J. P. [SEAL]

A true copy.
Attest:
(Sgd.) BARNET GLUCKMAN, J. P.

A true copy.
Attest:
WM. G. MAHAFFY,
United States Commissioner, [SEAL]
District of Delaware.

DISTRICT OF DELAWARE, *ss.*

Received this warrant on the twenty first day of July, 1911 at Wilmington, in said district and executed the same by arresting the within named defendant John Wesley Glasgow alias J. Wesley Glasgow, at Wilmington on the twenty first day of July, 1911 and have his body now in Court, as within I am commanded.

So answers,

(Sgd.) RALPH I. FLINN,
U. S. Marshal.

14 EXHIBIT C.

UNITED STATES OF AMERICA }
DISTRICT OF DELAWARE } *ss.*

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the United States Marshal for said district, and the Board of Trustees and Warden of the New Castle County Workhouse, New Castle County, Delaware, GREETING:

WHEREAS, after an examination in due form and agreeably to the usual mode of process against offenders in the State of Delaware, before me, William G. Mahaffy, United States Commissioner for the district of Delaware, there appears probable cause to believe that John Wesley Glasgow, alias J. Wesley Glasgow, late of the City of Wilmington, in the District of Delaware, at the district of Delaware aforesaid, on or about the twentieth day of July, A. D. 1911, did then and there knowingly and feloniously deposit and cause to be deposited in the Post Office of the said United States at the said City of Wilmington, in the said district of Delaware, for mailing and delivery by the Post Office establishment of the said United States, a certain obscene, lewd, lascivious and filthy book, pamphlet, writing, print and publication of an indecent character, bearing on the outside cover thereof the words "Sexual Science" and containing one hundred and fourteen printed pages, of too great length and of too indecent character to be here set forth in full, and which said obscene, lewd, lascivious and filthy book, pamphlet, writing, print and publication of an indecent character was then and there enclosed in a paper wrapper bearing the address "Mr. Frank Wolf, 1215 Court Street, Scranton, Pa. Printed Matter," in violation of section 211 of the Act of Congress approved March 4, 1909, and contrary to the form of the
15 act of Congress in such case made and provided and against the peace and dignity of the said United States.

AND WHEREAS, I have, agreeably to law, ordered the said John Wesley Glasgow, alias J. Wesley Glasgow, to enter into a recognizance, with sufficient surety, in the sum of two thousand five hundred dollars, for his appearance for trial for the said offense against the United States at the next District Court of the United States for the district of Delaware, to be held on the twelfth day of September, A. D. 1911, at Wilmington, in said district, as by law has cognizance of the said offense, or in default thereof to be committed to the New Castle County Workhouse, New Castle County, Delaware;

AND WHEREAS, the said John Wesley Glasgow, alias J. Wesley Glasgow has not offered such recognizance;

NOW, THEREFORE, you, the said Marshal, are hereby commanded that you convey the said John Wesley Glasgow, alias J. Wesley Glasgow to the said Workhouse, and you, the said Board of Trustees and Warden of the said Workhouse, are hereby commanded that you receive the said John Wesley Glasgow, alias J. Wesley Glasgow, and him there safely keep until he be discharged therefrom by due course of law.

WITNESS my hand and seal at Wilmington, in said district this twenty fifth day of July, A. D. 1911.

(Sgd.) WM. G. MAHAFFY,
United States Commissioner,
District of Delaware.

A true copy.

Attest:
WM. G. MAHAFFY,
United States Commissioner,
[OFFICIAL SEAL] District of Delaware.

DISTRICT OF DELAWARE, *ss.*

Received this Commitment, with the within named prisoner on the twenty fifth day of July, 1911 and on the same day I committed the said

prisoner to the custody of the Keeper named in said Commitment, with whom I left at the same time a certified copy of this Commitment.

(Sgd.) RALPH I. FLINN,
U. S. Marshal.

16 EXHIBIT D.

STATE OF DELAWARE)
NEW CASTLE COUNTY) *ss.*

Personally appeared before me, the subscriber, a Notary Public for the county and state aforesaid, Alfred P. Stevenson, personally known to be to me to be such, and who being by me first duly qualified according to law, solemnly and sincerely affirmed as follows: That he is a resident of the City of Wilmington, State of Delaware, and the proprietor of the Preston House in said city, located at 914 King Street; that in the month of June, 1911, J. Wesley Glasgow occupied rooms in affiant's house, and had there a number of books, clothing and other personal effects. That on or about the twentieth day of June, 1911, a policeman of the City of Wilmington together with a United States Marshall, came to affiant's house, entered the apartment occupied by said Glasgow, in his absence, and seized and took therefrom every article of personal property, including clothes, toilet articles, papers, laundry and everything whatsoever belonging to said Glasgow. That said officers did not exhibit or show any warrant or other authority of law for making said search and seizure. That the property of said Glasgow was taken to the United States Court House and there retained by the United States Marshall or the United States Postal Inspector.

ALFRED P. STEVENSON.

Affirmed and subscribed to before me, this fifteenth day of March, A. D., 1912.

GEORGE W. DORSEY, JR.,
Notary Public.

17 EXHIBIT E.

In United States District Court for the Northern District of Georgia.

In re
J. WESLEY GLASGOW.

JOHN C. FAY, being duly sworn, says that he prepared and has read the foregoing petition subscribed by J. Wesley Glasgow. That he acted as counsel for him at his recent trial; that on the day of the arraignment of the said Glasgow he called the attention of the court to the fact that his property had been unlawfully seized and that he had been stripped of his clothes and clothed in prison garb, and he was then in the presence of the court arrayed in the prison clothes and the attention of the court was especially directed to it, but the Court refused to allow affidavits showing improper treatment of prisoner to be filed and he continued to be brought into the presence of the court day after day dressed in the same way, and the court refused to interfere, alleging

that he had no authority; but that the matter was under the jurisdiction of the Attorney General and that the institution in which the defendant was confined was a State institution. That he offered to hear argument on the question whether he had the authority to interfere, but he declined to ameliorate his condition in any way, that the minutes of the court, as recorded to that are untrue, and in order to correct said minutes deponent demanded of the Deputy Clerk his stenographic notes of the exact occurrence, offering to pay him his lawful fees for a copy, but the clerk subsequently refused to permit him, said deputy, to furnish a copy which would disclose the falsity of the minutes, as recorded, as more fully appears by the annexed letter, and the said Bradford, upon
18 application to him refused to direct the clerk to furnish said stenographic notes or to direct him to amend his minutes to conform to the truth as shown by reference to the certified copy of the docket entries.

That deponent made further effort to obtain possession of the papers seized by the District Attorney and the District Attorney promised in open court to surrender them, and subsequently withheld the ones of value for the defense, and subsequently during the trial deponent made further efforts to open court to compel the District Attorney to surrender said papers, but the said Bradford refused to make such order until after the termination of the suit. See affidavit of Chas. C. Miller and docket entries.

Deponent further says that on the 2nd of January, at about 12.45 P.M. he filed with the Clerk, in the presence of the prisoner, the affidavit, certificate and application attached to said petition, and on the demand of the Clerk paid him his fees for filing the same, and he accepted the said papers and they were so filed.

That on the 6th of January the court assembled at about 12 o'clock noon, and the said Bradford immediately proceeded to read the orders hereinbefore set forth at the conclusion of which deponent arose, protested against the action of said Bradford, on the ground that he was disqualified by the affidavit and was without jurisdiction, and refused to proceed further, and requested that his protest against said Bradford's unlawful conduct should be entered upon the minutes of the Court, and notwithstanding that said Bradford assumed unlawfully to overrule the motion for a new trial and motion in arrest of judgment then pending in said cause, and proceeded over the protest of the prisoner to enter
19 judgment upon the verdict, and to sentence the defendant to imprisonment in the Atlanta Penitentiary.

JNO. C. FAY.

Sworn and acknowledged before me this 22 day of March 1912.

J. D. STEWARD,
Dep. Clk. U. S. Dist. Ct.
N. D. Ga.

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Clerk's Office
U. S. Circuit and District Courts
District of Delaware,
Wilmington.

Wm. G. Mahaffy,
Clerk.

JOHN C. FAY, Esq.,
Corcoran Building,
Washington, D. C.

October 27, 1911.

DEAR SIR:—

I have your telegrams of even date to me and to my deputy. I sent to you yesterday a copy of the minute entries in the Glasgow cases by mail, and now enclose a certified copy of these minutes, per your request in the above telegram.

With respect to the report of Monday's proceedings spoken of in your telegram to my deputy, I beg to advise that it is not the practice in this district to take the proceedings and furnish copies of the character mentioned in your telegram. I cannot undertake to furnish to you a copy of the memoranda that I caused to be taken to aid me in correctly entering upon the minutes the proceedings before the Court.

Yours very truly,
(Sgd.) WM. G. MAHAFFY,
Clerk.

P. S. The fees for above copies amount to $2.70.

W. G. M.

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EXHIBIT F.

Form 23 5000. 12, '10.

Persons corresponding with prisoners will carefully observe the following directions, viz.: Write plainly in English, confine yourself strictly to family and business matters. In directing letters, put prisoner's name and cell number plainly on envelope. Stamp properly to insure delivery. All letters are examined. No daily papers, food, or wearing apparel will be admitted. Friends may write as often as they wish. Prisoners may write but once in four weeks, and see their wives once in two weeks, and relatives once in four weeks. Visitors are not admitted to institution or permitted to see inmates on Holidays, Sundays or Saturdays.

L. CRAWFORD, Warden.

New Castle County Workhouse, Greenbank, Del.

Put your Name and Cell No. here

Name, J. Wesley Glasgow
Greenbank
Cell No., Marshallton, Del.

Put full address of your Letter here

Hon. John C. Fay
Third Floor Corcoran Bldg.
Washington, D. C.

Sept. 28, 1911.

DEAR JUDGE:

I received your letter on Saturday night, and I can assure you that it made my heart leap for joy. I had been feeling pretty blue for the past two weeks but your letter raised me from the Valley of Despond and carried me to the Mount of Ecstasy.

I think that was a very fine letter which you wrote to the District Attorney. I am convinced that if you are as efficient in the art of persuading juries as you are in the art of writing letters, my case is won. Your letter covered very fully every point discussed in our interview on Sept. 9th. I am sorry to say that the District Attorney hasnt complied with your request and released me on my own recognizance for I am still in bondage. I have been in captivity ten weeks today. It has seemed to me more like ten years.

I have written him four times for permission to obtain permission to procure the exhibits for the defense that are in my trunk and the fact that he failed to answer any of these leads me to believe that he now realizes what awful blunders they made and has no intention of drawing up any indictment.

I do not know what you told Mr. Hitchcock and Mr. Wickersham during the course of your interview but this I do know; if they understood the situation fully they would strain every nerve to prevent an indictment and thus save the Government a tremendous scandal. I can assure you that it will be the most sensational trial held in a Federal Court room in ten years. I do not know what evidence the prosecution intends to introduce but this I do know that when the jury learns what
22 tactics the prosecution has used in order to secure my conviction, they will have little sympathy for them. If this case ever comes to trial it will make me famous and my enemies notorious.

So my sixteen page letter to Mr. Hitchcock and the record of 22 missing letters were not enclosed. Dont worry on that score. My trial will be postponed indefinitely until I get an answer to that letter. And this report on the twenty missing letters will be one of the exhibits for the defense.

23 EXHIBIT G.

From The Evening Journal, Wilmington Delaware.
January 6, 1912.

LASHED ON BARE BACKS IN BITING COLD.

Horse Blankets Protect Men While Awaiting Carrying out of Sentence. Hands In Gloves While At The Post.

With the thermometer at 10 degrees above zero six men, one of them white, stood barebacked at the whipping post in the workhouse yard this morning and received their lashing sentences for larceny. The men were at the post but a few seconds, the longest time required to whip one being about two minutes.

Owing to the extreme cold weather there were but six persons in the yard to witness the whippings. While they were busy stamping their feet from the cold, the prisoners also appeared to be suffering from the weather.

It required just half an hour to lay on the lashes and after the men were assembled in the tunnel with their backs bared, they were taken out separately with a large horse blanket around their shoulders. Their hands were then covered with gloves and were strapped to the post

and with the blanket around their shoulders the sentence meted to them by the Court of General Sessions was read. This done, the blanket was removed and Warden Crawford laid on the lashes.

Haywood Spittle, colored, convicted of larceny, appeared to suffer the most. He received twenty lashes and at the falling of the first one he flinched. At the third he was twiching and from then until the last he squirmed and at times almost turned around. His eyes were filled with tears as he looked piteously at the Warden. Spittle was sentenced to serve two months in addition to receiving the lashes.

Howard Morris, the only white man to be whipped, received ten lashes and his back showed the marks plainly. He flinched when the "cat" first fell and once he uttered a sob.

Charles Lewis, colored, convicted of larceny, took his twenty lashes without a quiver. He is to serve two years imprisonment.

Samuel Richardson, colored, convicted of stealing chickens, approached the post with a smile. He was whipped with fifteen lashes, but he did not appear to mind it, although he was not smiling when he was released from the post. Richardson will serve two years.

Claude Bryan, colored, received ten lashes and will serve one year, having been convicted of larceny.

George Dutton, Colored, flinched when the third of his ten lashes fell and sighed when the ordeal was over.

FIFTEEN MONTHS IN PRISON FOR GLASGOW.

Judge Edward G. Bradford, in the United States Court today, denied the motion for a new trial, also the motion for arrest of judgment, made by John C. Fay, a Washington attorney, counsel for J. Wesley Glasgow, convicted in that tribunal of sending objectionable literature through the mails. At the same time Judge Bradford replied to the affidavit filed several days ago by Glasgow, through his attorney, in support of his application practically asking for the retirement of Judge Bradford from the case, principally on the ground that bias was alleged to have been shown by the Court towards the defendant.

Judge Bradford's remarks came unexpected to Mr. Fay who was present and the latter hesitated for a moment before addressing the Court.

24 Judge Bradford's remarks were made without hesitation and his demeanor while on the bench plainly showed how the affidavit in question had affected him. He said he would not even refer to the paper and while overruling the motion, he could not refrain from making a statement. The court said that the affidavit in question as counsel for the defendant knows, were absolutely false and malicious. The court sentenced Glasgow to pay a fine of $500 and be imprisoned in the penitentiary at Atlanta, Georgia, for fifteen months.

After Judge Bradford made his statement Mr. Fay entered a protest to the proceedings going any further.

Before being sentenced Glasgow, in a statement to the court, also made protest against any further proceedings. The court then imposed sentence.

25 From The Washington Post, Washington, D. C.
March 3, 1912.

MAN WEEPS UNDER LASH

Brave Until Thirtieth Blow, Then His Courage Gives Way.

Member of Prominent Delaware Family Convicted of many Burglaries, has Another whipping coming.

Special to The Washington Post.

Wilmington, Del., March 2.—Richard Wright, a white man and member of a well-known family of Kent county, Del., was whipped with 40 lashes on the bare back at the Newcastle county workhouse today. He was convicted at Dover this week of committing a large number of the burglaries along the line of the Delaware Railroad, and was sentenced to 4 years imprisonment and 70 lashes. The remaining 30 will be administered next Sunday.

The victim was brave today until the thirtieth lash descended. Then he began to squirm. When the lash fell for the fortieth time he was crying. The whipping took place in the open air, although the mercury stood at 26 degrees and a biting wind was blowing.

Fred W. Jackson, William B. Ennis, Charles Walters, and Andrew Tillman, all negroes, convicted of robberies, were each given twenty lashes.

26 ## EXHIBIT H.

In the District Court of the United States
in and for the District of Delaware.

No. 1. September Term 1911.

Violation Act March 4, 1909, C. 321. Sec. 211.

THE UNITED STATES OF AMERICA

vs.

JOHN WESLEY GLASGOW, alias JOHN WESLEY CONYNGHAM GLASGOW.

DISTRICT OF DELAWARE, *ss.*

1. The Grand Jurors of the United States of America, inquiring in and for the District of Delaware, upon their respective oaths and affirmations, respectively do present: That heretofore, that is to say, on the twentieth day of July in the year of our Lord, one thousand nine hundred and eleven, John Wesley Glasgow, alias John Wesley Conyngham Glasgow, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, that is to say, at the City of Wilmington, New Castle County and State of Delaware, then and there, unlawfully and feloniously did knowingly deposit and cause to be deposited in the Post Office of the said City of Wilmington for mailing and delivery by the Post Office Establishment of the said United States

certain non-mailable matter, that is to say a certain obscene, lewd and lascivious book; which said book then and there was entitled "Personal Purity and Sexual Science" and was bound in a purple colored cover and, then and there, on a certain page thereof, that is to say, on the title page were printed the words and figures following, that is to say, "Personal Purity and Sexual Science—Including Anatomical Illustrations and Obstetric Operations, also a Series of Engravings Illustrating the Formation of Life, Growth of the Embryo, Development of the Foetus, and the Caesarean Operation By Prof. Benjamin Franklin Stratton Assisted by A Number of Eminent Physicians, Lawyers and Reformers—Ninth Edition—Published By J. W. Glasgow, Evanston, Illinois—1911," and, then and there, contained numerous pages, that is to say, one hundred and fourteen pages with certain pictures and
27 illustrations therein and thereon; and which said book is so obscene, lewd and lascivious, that the same would be offensive to the court here and improper to be spread upon the records thereof, wherefore the Grand Jurors aforesaid do not set forth the same in this indictment; and the said John Wesley Glasgow, alias John Wesley Conyngham Glasgow, then and there, had knowledge, information and notice of the contents of said book; and said book, then and there, was enclosed in a paper wrapper, which said wrapper, then and there was addressed and directed as follows, that is to say; "Mr. Frank Wolf, 1215 Court Street, Scranton, Pa." contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the said United States.

2. The Grand Jurors aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations, respectively do further present; that heretofore, that is to say, on the twentieth day of July in the year of our Lord one thousand nine hundred and eleven, John Wesley Glasgow, alias John Wesley Conyngham Glasgow, late of the district aforesaid, at the District aforesaid and within the jurisdiction of this court, that is to say, at the City of Wilmington, New Castle County and State of Delaware, then and there, unlawfully and feloniously did knowingly deposit and cause to be deposited in the Post Office of the said City of Wilmington, for mailing and delivery by the Post Office Establishment of the said United States certain non-mailable matter, that is to say, a certain obscene, lewd, lascivious and indecent book and publication; which said book and publication then and there was entitled "Personal Purity and Sexual Science" and was bound in a purple colored cover and, then and there, on a certain page thereof, that is to say, on the title page were printed the words and figures following, that is to say, "Personal Purity and Sexual Science—Including Anatomical Illustrations and Obstetric Operations, also a Series of Engravings Illustrating the Formation of Life, Growth of the Embryo, Development of the Foetus, and the Caesarean Operation by Prof. Benjamin Franklin Stratton Assisted by a number of Eminent Physicians, Lawyers and Reformers—Ninth Edition —Published by J. W. Glasgow, Evanston, Illinois—1911," and, then and
28 there, containing numerous pages, that is to say, one hundred and fourteen pages with certain pictures and illustrations therein and thereon; and which said book and publication is so obscene, lewd, lascivious and indecent that the same would be offensive to the court here and improper to be spread upon the records thereof, wherefore the

Grand Jurors aforesaid do not set forth the same in this indictment; and the said John Wesley Glasgow alias John Wesley Conyngham Glasgow, then and there had knowledge, information and notice of the contents of said book and publication; and said book and publication, then and there was enclosed in a paper wrapper, which said wrapper, then and there, was addressed and directed as follows, that is to say, "Mr. Frank Wolf, 1215 Court Street, Scranton, Pa."; contrary to the form of the Act of Congress in such case made and provided and against the peace and dignity of the said United States.

(Sgd.) JOHN P. NIELDS,
United States Attorney.
District of Delaware.

A true copy.
Attest; WM. G. MAHAFFY, *Clerk.*
by H. C. MAHAFFY, JR., *Deputy.*

29

EXHIBIT I.

STATE OF DELAWARE }
NEW CASTLE COUNTY } *ss.*

BE IT REMEMBERED, that on this fifteenth day of March, A. D., 1912, personally appeared before me, George W. Dorsey, Jr., a Notary Public for the State of Delaware, Chas. Colden Miller, known to me personally to be such, who being by me first duly sworn according to law, deposes and says:

That he is a member of the bar of the District of Columbia, and of counsel in the case of United States vs. J. Wesley Glasgow in the United States District Court for the District of Delaware. That on or about the twenty-first day of November, 1911, he filed and presented to the court in said District an application in behalf of said Glasgow for the issuance of a commission to take testimony in behalf of said defendant in the Cities of Washington, D. C., and Chicago, Illinois, together with an affidavit made by said Glasgow to the effect that he expected the witnesses named in said application to give evidence material to his defence; that he was without means to bring said witnesses before the court to testify in his behalf, and that justice would not be done him if he were deprived of their testimony. Affiant further states that upon consideration of said application and affidavit by the Honorable Edward G. Bradford, United States District Judge, said Judge declined said application and gave his reasons therefor in the following language: "That on the assumption that the Court, against the consent of the United States Attorney, possesses the power to award a Commission dedimus potestatem, a proper case has not been made for the exercise of that power; and on the further ground that the court does not possess the power to do it in any circumstances without the permission of the United States District Attorney."

30 Affiant further says that he was present in court on or about the sixteenth day of December, 1911, and heard John C. Fay, of counsel for said Glasgow, make application to the Court for an order instructing the United States Attorney to deliver to him certain books and papers belonging to the defendant upon the ground that the same constituted

material evidence in said Glasgow's defence, and that the court refused to do so until after the jury had brought in its verdict.

CHAS. COLDEN MILLER.

Sworn to and subscribed before me the day and year first above written.

[SEAL] GEORGE W. DORSEY, JR.,
Notary Public.

31 EXHIBIT K.

In The District Court of the United States for the District of Delaware.

THE UNITED STATES OF AMERICA,
vs.
JOHN WESLEY GLASGOW, alias JOHN WESLEY CONYNGHAM GLASGOW.

No. 1. September Term 1911.
Violation Act March 4, 1909.
C. 321, Sec. 211.

Docket Entries.

Octo. 16, 1911. The Grand Jury return "A true bill"; same day filed.

Octo. 17, 1911. Order for arraignment, and defendant arraigned.

Octo. 17, 1911. Defendant pleads "Not Guilty"; same day order granting leave to withdraw plea on or before 23rd instant, at 10 o'clock A.M. and file motion to quash, demurrer etc.

Octo. 17, 1911. Order denying defendant's motion to fix amount of bail at $500 and remanding defendant to custody of Marshal.

Octo. 23, 1911. Defendant moves the court for an order extending time for withdrawal of plea and substitution of motion to quash, demurrer etc.

Octo. 23, 1911. Counsel for defendant asks leave to file affidavit of defendant relative to treatment in New Castle County Workhouse to apprise the court of the state of affairs; same day leave declined by the court unless in connection with application by defendant for relief; same day defendant declined to make such application.

UNITED STATES OF AMERICA, }
DISTRICT OF DELAWARE. } *ss.*

I, William G. Mahaffy, Clerk of the District Court of the United States for the district of Delaware, do hereby certify that I have carefully compared the foregoing writing with the original docket entries in the case of United States vs. John Wesley Glasgow, alias John Wesley Conyngham Glasgow, No. 1, September Term 1911 and the same is a

true and correct copy of said docket entries, so full and complete as the same now remain of record in my office.

[SEAL] In witness whereof I have hereunto set my hand and affixed the seal of said Court, at Wilmington in said district this twenty seventh day of October, A D 1911.

WM. G. MAHAFFY,
Clerk.

32 UNITED STATES OF AMERICA, } ss.
DISTRICT OF DELAWARE. }

I, William G. Mahaffy, Clerk of the District Court of the United States for the district of Delaware, do hereby certify that I have carefully compared the annexed five typewritten pages with that portion of the original docket entries in the case of The United States of America v. John Wesley Glasgow, alias John Wesley Conyngham Glasgow, No. 1, September Term 1911, appearing on the Criminal Docket of said court under the title of said cause from October 23, 1911 to the day of the date hereof, and find the same to be a true and correct copy thereof, so full and complete as the same now remains of record in my office.

[SEAL] In witness whereof I have hereunto set my hand, and affixed the seal of said court at Wilmington, in said District, this fifteenth day of March, A. D. 1912.

WM. G. MAHAFFY,
Clerk.

33 *Docket Entries.*

In the District Court of the United States for the District of Delaware.

THE UNITED STATES OF AMERICA, *vs.* JOHN WESLEY GLASGOW, alias JOHN WESLEY CONYNGHAM GLASGOW.	No. 1, September Term 1911. Violation Act March 4, 1909, C. 321. Sec. 211.

Octo. 23, 1911.	Defendant moves the court for an order extending time for withdrawal of plea and substitution of motion to quash, demurrer etc.
Octo. 23, 1911.	Counsel for defendant asks leave to file affidavit of defendant relative to treatment in New Castle County Workhouse, to apprise the Court of the state of affairs; same day leave declined by the Court unless in connection with application by defendant for relief; same day defendant declined to make such application.
Nov. 1, 1911.	Order granting leave to withdraw plea of "Not Guilty" and to file in lieu thereof plea to jurisdiction; same day plea of "Not Guilty" withdrawn and plea to jurisdiction filed, and same set for hearing on November 7, 1911, at 11 o'clock A.M.

Nov. 7, 1911. District Attorney asks leave to file demurrer to said plea and thereafter withdrew his request for leave to file demurrer and same day presented a written motion to strike out plea to jurisdiction.

Nov. 8, 1911. Order granting leave to defendant to forthwith withdraw plea to jurisdiction and substitute demurrer; same day defendant declined to avail himself of such leave to withdraw plea to jurisdiction; same day motion of United States to strike out said plea, filed.

Nov. 8, 1911. Counsel for defendant move the court to discharge defendant; same day order denying said motion.

Nov. 8, 1911. Hearing on plea to jurisdiction and motion to strike out same.

Nov. 10, 1911. Order overruling plea to jurisdiction.

Nov. 10, 1911. Motion of defendant to quash indictment filed; same day order denying same without prejudice to defendant being heard on demurrer to indictment.

Nov. 10, 1911. Defendant's demurrer to indictment, filed; same day order that argument on demurrer be heard on November 14, 1911, at 11.30 o'clock A.M.

Nov. 14, 1911. Joinder in demurrer, filed.

Nov. 14, 1911. Defendant moves the court to postpone argument on demurrer; same day order denying said motion.

Nov. 14-15, 1911. Argument on demurrer.

Nov. 20, 1911. Order overruling demurrer and that defendant plead to indictment.

Nov. 20, 1911. Motion of defendant to require Grand Jury to return a bill of particulars, with affidavit of defendant annexed, filed; same day order denying said motion etc.

34 Nov. 20, 1911. Motion of defendant to require bill of particulars etc. with affidavit of defendant annexed, filed; same day hearing continued until tomorrow at 10 o'clock A.M.

Nov. 21, 1911. Hearing on said motion for bill of particulars; same day order that U. S. Attorney furnish to defendant in open court at 2.30 o'clock P.M. this day, a bill of particulars, and at said time said bill of particulars was delivered to defendant.

Nov. 21, 1911. Defendant pleaded "Not Guilty" to said indictment.

Nov. 21, 1911. Defendant's written motion for issuance of commission *dedimus potestatem*, with his affidavit annexed filed; same day hearing on said motion; same day order denying said motion.

Nov. 21, 1911.	Defendant's written motion to direct U. S. Attorney to deliver to defendant certain papers, clothing etc. filed, same day, with assent of defendant, no order is made thereon.
Nov. 21, 1911.	Defendant's written motion to amend minutes of the proceedings of October 17, 1911, and to direct clerk to furnish defendant with copy of the stenographic report made by the deputy clerk of the proceedings on October 23, 1911 and November 1, 1911, presented.
Nov. 21, 1911.	Defendant moves the court to continue the trial of said cause until the next term of said court; and District Attorney opposes said motion; same day order containing trial of said cause until December 12, 1911, at 11.30 o'clock A.M.
Dec. 12, 1911.	Order that motion of defendant to amend minutes and that clerk furnish copies etc. presented November 21, 1911 be filed; same day order denying said motion.
Dec. 12, 1911.	Affidavit of defendant, filed; same day defendant moves the court for order for summoning of witnesses in his behalf; same day order thereon and said order filed.
Dec. 12, 1911.	Trial.
Dec. 13, 1911.	Trial.
Dec. 14, 1911.	Trial.
Dec. 15, 1911.	Trial.
Dec. 16, 1911.	Trial. Verdict "Guilty."
Dec. 16, 1911.	Defendant gives notice of his motion for new trial and in arrest of judgment; same day order that said motions and reasons be filed on or before 21st. inst.
Dec. 21, 1911.	Defendant's motions in arrest of judgment and for new trial filed.
Dec. 23, 1911.	Order setting motions for new trial and in arrest of judgment down for hearing January 6, 1912, at 11.30 o'clock A.M.
Jany. 6, 1912.	Leave to file affidavit of defendant, with certificate of counsel annexed, denied.
Jany. 6, 1912.	Order denying motions for new trial and in arrest of judgment.
Jany. 6, 1912.	Motion for judgment; same day.

Sentence.

That defendant forfeit and pay to the United States a fine of $500 and be imprisoned in United States Penitentiary at Atlanta, Georgia, for the term of fifteen months, beginning on this 6th day of January, A. D. 1912 and ending on the fifth day of April, A. D. 1913.

Jany. 6, 1912. Commitment issued.

Jany. 10, 1912. Marshals returns on commitment "Served" &c. same day writ filed.

35 In the United States District Court for the District of Delaware, the 21st day of Dec., 1911.

THE UNITED STATES
vs.
J. WESLEY GLASGOW, etc. } Crim. Doc. No. 1.

Motion in Arrest of Judgment.

Comes now the defendant, after verdict and moves the Court to arrest the entry of judgment upon verdict and assigns as reasons therefor:

For Errors of Law.

1st. That the Court is not clothed with jurisdiction to entertain, or render judgment against the defendant, for that the indictment does not charge any crime against the United States, nor does section 211 of the penal code make the doing of any of the acts described in said indictment unlawful, or a crime against the U. S.

2nd. That said Sec. 211, and the indictment thereunder is in derogation of the rights and constitutional guarantees of the defendant. *a.* In that it abridges the freedom of the press; *b.* In that it fails to inform the defendant of the nature of the offence with which he is charged; *c.* In that it is an ex post facto law. *d.* In that it is void for uncertainty.

3rd. That the rulings of the Court were in derogation of the Constitutional guarantees and rights of the defendant. (1) In that the presiding Judge permitted evidence obtained in violation of the provision forbidding unreasonable searches and seizures to be introduced to the defendant's detriment. (2) In that he likewise refused to require the Grand Jury to describe in its indictment with reasonable certainty the
36 nature of the offence charged, so as to apprize the defendant thereof, as well as to apprize the petit jury of the offense they were to try. (3) In permitting the attorney for the United States, by a bill of particulars to substitute for the indictment of the Grand Jury, practically an indictment or information, by the Attorney for the United States.

4th. In that the Court erred in instructing the Jury, that under the indictment, charging the act complained of to have been "feloniously" done, that a criminal intent was not an element of the offence thereunder, thereby causing a fatal variance between said verdict and the offence charged in the indictment.

5th. For other matters to be shown at the hearing.

Wherefore the defendant moves the Court to arrest the Judgment, and that all said proceedings be for naught held and the defendant be hence discharged from his imprisonment.

JOHN C. FAY,
Attorney for Defendant.

CHAS. C. MILLER
of Counsel.

37 In the United States District Court for the District of Delaware, the 21st day of Dec., 1911.

THE UNITED STATES
vs.
J. WESLEY GLASGOW, etc. } Crim. Doc. No. 1.

Motion for a New Trial.

Comes now the defendant after verdict and moves the Court to set aside the verdict and grant the defendant a new trial and assigns as reasons therefor.

1st. That there was no legal admissible evidence upon which to found the said verdict, all evidence having been obtained in violation of defendant's constitutional right.

2nd. That said verdict was contrary to the instructions of the Court, in that they were instructed to consider only the evidence, and there was none, as set forth in point 1.

3rd. That the jury failed to give to defendant the presumption of innocence as required by instructions of the Court.

4th. For errors of law committed by the Court, as set forth in the motion in arrest and in the exceptions of defendant noted at the time upon the minutes of the presiding Judge.

5th. For misbehavior of the Attorney of the United States in the presence of the jury which tended unlawfully to create a prejudice against the defendant, in his endeavor to introduce irrevelant and inadmissible evidence, under the guise of its introduction for a limited purpose, and using it for an ulterior purpose, than that for one for which it was admissible.

6th. For refusing to accept the defendant's offer to admit that the
38 defendant knew the contents of the book, and calling witnesses to prove the fact and seeking by language employed by such witnesses or their description of the incidents attending their knowledge of the defendant's knowledge of the contents of the book to get before the jury inadmissible matter that tended to create a bias or prejudice against the defendant, and commenting thereon before the jury.

Wherefore the defendant moves the court to set aside the verdict and to award the defendant a new trial.

JOHN C. FAY,
Attorney for Defendant.

CHAS. C. MILLER
of Counsel.

NORTHERN DISTRICT OF STATE OF GEORGIA. } ss.

John C. Fay being duly sworn says that the annexed motions in arrest of judgment and for a new trial are true copies of the originals by him filed in the United States District Court for the District of Delaware and which were pending and undisposed of on the 2nd day of January 1912.

JNO. C. FAY.

Sworn to and subscribed before me this 22 day of March 1912.

39 UNITED STATES OF AMERICA
DISTRICT OF DELAWARE

I, J. Wesley Glasgow, do hereby solemnly swear that I am the defendant in the above entitled cause now pending in said Court and in the proceedings thereunder, that there is now pending therein certain proceedings, to wit, a certain motion for a new trial, and a motion in arrest of judgment, and hearings thereon have been fixed for January 6th, 1912 before Honorable Edward G. Bradford, United States District Judge for the District of Delaware; defendant further upon this oath says that the said Honorable Edward G. Bradford, the said Judge before whom the said proceedings are to be heard or tried as aforesaid, has both a personal bias, and a personal prejudice against him, and also a personal prejudice and bias in favor of John P. Nields, Esquire, United States Attorney for the District of Delaware who is the Attorney representing the United States in said proceedings, and the facts and the reasons for his belief that such bias or prejudice exists are,

First. That said Judge caused his arraignment within twenty-four hours of his indictment, and required him to plead immediately without he or his counsel having had opportunity to read the indictment and refused him a reasonable time in which to withdraw his plea and demur or otherwise attack the validity of the indictment, allowing only four days for the purpose, less than one half the time allowed in said Court in a civil suit to plead or demur to a declaration, and the time allowed at common law.

Second. That when apprised of the fact on the day of his arraignment that he had immediately on his arrest and before his indictment had been stripped of his clothes and dressed in penitentiary clothes, and had been
40 deprived of seeing the newspapers, fed on prison fare, his communication to and with counsel either unmailed or opened and read and that he was still subjected to the same treatment, said Judge refused to interfere and permitted such treatment to continue asserting that he had no authority to interfere.

Third. In permitting John P. Nields, United States Attorney, to withhold and suppress certain papers necessary and important to him for his defence, which he had unlawfully seized and taken possession of, and refused when applied to, to require the said Attorney for the United States to return the same to him until after the conclusion of the trial thereby depriving him of valuable and material evidence in his defense.

Fourth. That the said Judge, being informed that his letters to counsel, and letters from counsel were being opened and read by persons in whose custody he was, and while under protection of the Court, refused to

permit affidavits establishing such violation of his constitutional rights to be filed, or to take any action thereon, and when informed that the United States Marshal refused to allow him to confer with counsel except in his presence and hearing, refused to direct the Marshal to permit him to have a private interview, but referred his counsel to the United States Attorney for relief, and when informed that Deputy Marshal had assaulted him in the Court room, refused to take notice of complaint because it did not occur in the presence of the Court, but immediately after adjournment.

Fifth. That said Judge by arbitrary and unjust ruling deprived him of two peremptory challenges to Jurors, allowing him to exercise the right of peremptory challenge in eight cases only instead of ten as allowed him by law.

Sixth. That said Judge refused to permit a dedimus potestatem to issue to take the testimony of witnesses material in his defence, alleging
41 from the Bench as ground for said refusal that he would not allow a dedimus to issue "without the permission of the District Attorney," and the District Attorney in open Court refused said permission.

And defendant on oath further says for cause why the foregoing affidavit was not filed "not less" than ten days before the beginning of the present term of the Court, that said Act permitting the filing of the same did not become operative or go into effect until the first day of January, A. D. 1912, and the first opportunity to file the same occurred this day.

J. WESLEY GLASGOW.

On this second day of January, A. D. 1912 before me personally came J. Wesley Glasgow, the defendant in the said proceedings, and made oath before me in due form of law, upon the Holy Evangels of Almighty God to the foregoing affidavit by him subscribed is true. Witness my hand and the seal of said Court the day and year aforesaid.

WM. G. MAHAFFY,
[SEAL] *Clerk U. S. District Court,*
District of Delaware.

Certificate of Attorney of Record.

THE UNITED STATES OF AMERICA
DISTRICT OF DELAWARE

I, John C. Fay, do hereby certify that I am the counsel and Attorney of Record for J. Wesley Glasgow, the defendant in above entitled cause, and I do further certify that I know the contents of the foregoing affidavit, and the application and affidavit are made in good faith. Dated Wilmington Delaware, January 2d, 1912.

JNO. C. FAY,
Attorney of Record.
CHAS. C. MILLER,
Of Counsel.

41½ NORTHERN DISTRICT OF GEORGIA.

I, John C. Fay being duly sworn say that on the 2nd day of January 1912 in the presence of J. Wesley Glasgow and Eugene A. Hardesty and

others I delivered the original of this paper to Wm. G. Mahaffy in the Clerk's office of the United States District Court for the District of Delaware and paid to him on his demand his lawful fees for filing the same and he received and accepted the same as clerk of said Court.

JNO. C. FAY.

Sworn & subscribed before me this 22 day of March 1912.

J. D. STEWARD, *Deputy Clerk U. S. Dist. Ct. N. D. Ga.*

42 EXHIBIT L.

In the United States District Court
For the District of Columbia

THE UNITED STATES *vs.* J. WESLEY GLASGOW } No. 1, September Term, 1911. Criminal docket No.

Comes now J. Wesley Glasgow in proper person and makes and files in this cause the annexed affidavit under the provisions of Section 24 of an act of Congress entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March 3d, 1911, and which Act took effect and became in force on and after January 1st, 1912, and requests the Court to forthwith order the same to be entered on the records of the Court, and order that an authenticated copy thereof shall be forthwith certified to the senior circuit judge for the 3rd circuit, now present in said circuit in accordance with the requirement of Section 20 of the Act aforesaid.

(Sgd.) J. WESLEY GLASGOW.

JNO. C. FAY,
C. C. MILLER,
Of Counsel.

43 EXHIBIT M.

U. S. District Court Saturday, January 6, 1912.

The Court met pursuant to adjournment and was open by the Judge for business.

Present:

HON. EDWARD G. BRADFORD, U. S. District Judge.

THE UNITED STATES OF AMERICA *vs.* JOHN WESLEY GLASGOW, alias JOHN WESLEY CONYNGHAM GLASGOW. } No. 1. September Term, 1911.

Present:

John P. Nields, Esq., United States Attorney.
John C. Fay, Esq., Attorney for defendant.
Defendant in custody of the Marshal.

This being the day heretofore set down for hearing the motion for a new trial and the motion in arrest of judgment, filed by the defendant in

the above entitled cause on the twenty first day of December, A. D. 1911, the court announced that before proceeding further in this case the court desired to make a statement, which statement was made by the court, as follows:

44 On the morning of Thursday last, on arriving at my rooms in this building after an absence of several days from the State, the clerk of this court, Mr. Mahaffy, called my attention to a certain affidavit made by the defendant and certified to by his counsel, Mr. Fay, which had been delivered to him, Mr. Mahaffy, to be filed ostensibly pursuant to section 21 of the act of Congress of March 3, 1911, entitled "An Act to codify, revise and amend the laws relating to the judiciary." (36 Stat. Part 1, page 1087). Section 21, among other things, provides that "whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, the judge shall proceed no further therein, but another judge" shall be designated or chosen as elsewhere prescribed in the act "to hear such matter"; and further "every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists" and shall be "accompanied by a certificate of counsel of record that such affidavit and application are made in good faith." On being asked by the clerk for instructions in the matter I directed that the affidavit be not filed until the further order of the court.

In the judgment of the court, whatever may be the applicability of the section to other cases differently circumstanced, it does not and was not intended by Congress to apply to this case at its present stage, and consequently there was no authority or justification for the filing of such an affidavit as that in question.

45 But the dignity of the court and the respect properly due to it demand that more than a passing notice be taken of this incident. This unauthorized affidavit sets forth that the judge of this court "has both a personal bias, and a personal prejudice" against the defendant, and
46 also "a personal prejudice and bias in favor" of the United States Attorney for the district of Delaware, and proceeds to allege so-called facts and reasons for the asserted belief of the defendant in the existence of such bias or prejudice. I shall not compromise the properties of this occasion by referring in detail to the contents of the affidavit. It contains absolutely no allegation bearing on bias or prejudice that is not grossly misleading, wilfully distorted or absolutely false, and the senior counsel for the defendant knows, as this court knows, and as the proceedings in the trial of the case will disclose, that every such allegation is grossly misleading, wilfully distorted or absolutely false. If the averments in that affidavit were true I should be not only unfit to sit in this case, but unworthy of filling any judicial office. And yet he has seen fit formally to certify that he knows the contents of the affidavit and that the application and affidavit are made in good faith. In the judgment of this court,—and I extremely regret to feel compelled to say it,—any lawyer who could be so oblivious to the obligations of his official oath as to append such a certificate to such a false and infamously unfair affidavit, knowing the contents, displays a degree of professional and moral turpitude which should leave him no place among honorable

practitioners at the bar of this or any other judicial tribunal. Whatever may be the code of professional ethics elsewhere we are to be congratulated that hitherto the legal profession in Delaware has been free from such contaminating influences or practices. And what accentuates the ingratitude and baseness of such an assault upon the judicial reputation
47 of one who, whatever his failings or shortcomings, has always tried to be fair and impartial as between litigants in the administration of justice, criminal and civil, is the fact that if section 21 of the act in question be applicable to this case, which as the court has determined it is not, the judge has no protection whatever against a false and perjured affidavit, and his reputation as a fair and impartial dispenser of justice goes for nothing, and is absolutely at the mercy of any litigant who, either of his own motion or at the instigation of unscrupulous counsel charges bias or prejudice against him. The mouth of the judge is sealed; he is not permitted to deny or refute the allegations made against him, whatever may be their falsity or whatever his reputation as a just and impartial judge, or howsoever gross the depravity of the affiant. On the above assumption, upon the filing of such an affidavit the judge, without any opportunity for a hearing on the question of his alleged bias or prejudice, is summarily removed from the case on the ground of bias or prejudice and his reputation, which is his property and most valued possession, blasted in the eyes of the community, who, without understanding the peculiar character of the law under which the judge is removed, but knowing that he has been accused of bias or prejudice, naturally conclude that such a charge has been satisfactorily established against him when, in point of fact his mouth and the mouths of witnesses on whom he might otherwise rely, are absolutely sealed. But this court cannot impute to Congress an intent that a convicted felon should be able to oust the judge before whom he was tried from further proceeding in the case.

48 It is abhorrent to one's sense of justice that judicial reputations should be at the mercy of convicted criminals whose false affidavits the judges are not permitted to refute. A judge's reputation is his property of which he should not be deprived without due process of law. The affidavit in question is false, insulting and malicious, and, as it is unauthorized by the law, it has no proper place among the files of this court.

49 Thereupon, said motions for a new trial and in arrest of judgment were ordered by the court for hearing and John C. Fay, Esq. Attorney for said defendant, stated to the court that in view of the affidavit and in view of the law he thought that His Honor, Judge Bradford, was not entitled to proceed further in this case, and that he should not compromise the rights of his client by appearing further before His Honor; and John P. Nields, Esq. United States Attorney for the district of Delaware, stated to the court that he did not desire to argue the motions and was content that the court should dispose of them.

Whereupon, Mr. Fay asked the court to enter his protest upon the records of the court.

Thereupon, on reading and considering the motion of said defendant to set aside the verdict and award the defendant a new trial, and the reasons assigned therefor, it is ordered by the court that the said motion be and the same hereby is denied.

Thereupon, on reading and considering the motion of the defendant to arrest the entry of judgment upon verdict and the reasons assigned therefor, it is Ordered by the court that said motion be and the same hereby is denied.

Whereupon, the United States of America by John P. Nields, Esq. United States Attorney for the District of Delaware moves the court for judgment.

Thereupon, the defendant stood up and the court asked him if he had anything to say why sentence should not be pronounced upon him.

Whereupon, the said defendant consulted with John C. Fay, Esq. his attorney, and stated to the court that he protested against any further proceedings on the part of His Honor, Judge Bradford, in this case.

Sentence.

And it appearing to the court that the jury has found the said John Wesley Glasgow alias John Wesley Conyngham Glasgow Guilty in manner and form as he stands indicted in the indictment returned against him in the above entitled cause on the sixteenth day of October, A. D.
50 1911, it is considered and adjudged by the court now here that you, John Wesley Glasgow alias John Wesley Conyngham Glasgow, do forfeit and pay to the United States a fine of five hundred dollars ($500) and the costs of this prosecution; and further, that you John Wesley Glasgow alias John Wesley Conyngham Glasgow be imprisoned in the United States Penitentiary at Atlanta, Georgia for the term of fifteen months, beginning on the sixth day of January A. D. 1912, and ending on the fifth day of April, A. D. 1913.

And it is further considered, adjudged and ordered by the court now here that you John Wesley Glasgow alias John Wesley Conyngham Glasgow, be now committed to the custody of the United States Marshal for the district of Delaware, in order that the foregoing sentence may be carried into execution.

* * * * *

The court adjourned until Monday next at ten o'clock A.M.

(Sgd.) WM. G. MAHAFFY,
Clerk.

UNITED STATES OF AMERICA)
DISTRICT OF DELAWARE.) *ss.*

I, William G. Mahaffy, Clerk of the District Court of the United States for the district of Delaware do hereby certify that I have carefully compared the foregoing typewritten pages with the entries on the Minutes of said court relative to the case of the United States of America vs. John Wesley Glasgow, alias John Wesley Conyngham Glasgow, No. 1, September Term, 1911 and find the same to be true and correct thereof so full and complete as the same now remains of record in my office.

[SEAL] In witness whereof I have hereunto set my hand and affixed the seal of said court at Wilmington in said district this fifteenth day of March A. D. nineteen hundred and twelve.

WM. G. MAHAFFY,
Clerk.

51 EXHIBIT N.

In the District Court of the United States
for the Northern District of Georgia

THE UNITED STATES OF AMERICA *vs.* JOHN WESLEY GLASGOW alias JOHN WESLEY CONYNGHAM GLASGOW	No. 1 September Term, 1911 Indictment Violation Act March 4, 1909, C. 321, Sec. 211.

DISTRICT OF DELAWARE, *ss.*

And now, to wit, this sixth day of January A. D. 1912 the District Attorney moves for judgment;

And it appearing to the court that the jury has found the said John Wesley Glasgow, alias John Wesley Conyngham Glasgow guilty in manner and form as he stands indicted in the indictment returned against him in the above entitled cause on the sixteenth day of October, A. D. 1911, it is considered and adjudged by the court now here that you, John Wesley Glasgow alias John Wesley Conyngham Glasgow, do forfeit and pay to the United States a fine of five hundred dollars and the costs of this prosecution; and further, that you, John Wesley Glasgow alias John Wesley Conyngham Glasgow be imprisoned in the United States Penitentiary at Atlanta, Georgia, for the term of fifteen months beginning on this sixth day of January, A. D. 1912, and ending on the fifth day of April, A. D. 1913.

And it is further considered, adjudged and ordered by the court now here that you, John Wesley Glasgow, alias John Wesley Conyngham Glasgow, be now committed to the custody of the United States Marshall for the district of Delaware in order that the foregoing sentence may be carried into execution.

52 WITNESS the Honorable Edward G. Bradford, Judge of said Court, and the seal thereof, at Wilmington, in said district, this sixth day of January, A. D. nineteen hundred and twelve.

(Sgd) WM. G. MAHAFFY,
Clerk U. S. District Court,
District of Delaware.

[SEAL]

Marshal's Return.

DISTRICT OF DELAWARE, *ss.*

I hereby certify and return that, on the eighth day of January, A. D. 1912, at the City of Atlanta, in the State of Georgia, I personally served the within writ by delivering the body of the within named John Wesley Glasgow alias John Wesley Conyngham Glasgow into the custody of William H. Moyer, the Warden of the within named United States Penitentiary at Atlanta, Georgia, and at the same time and place I received from said Warden his receipt for the said body of said defendant and then and there delivered to said Warden a certified copy of the within Commitment.

So answers,

(Sgd) RALPH I. FLINN,
United States Marshal
For District of Delaware

January 10th, 1912.

53 UNITED STATES OF AMERICA } ss.
DISTRICT OF DELAWARE }

I, William G. Mahaffy, Clerk of the District Court of the United States for the District of Delaware, do hereby certify that I have carefully compared the foregoing two typewritten pages with the original committment in the case of the United States of America vs. John Wesley Glasgow alias John Wesley Conyngham Glasgow, No. 1 September Term, 1911, and the Marshal's return on said commitment, and find the same to be a true and correct copy of said committment and marshal's return, so full and complete as the same now remains on file and among the records of said court in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Wilmington, in said district, this fifteenth day of March, A. D. nineteen hundred and twelve.

WM. G. MAHAFFY,
Clerk.

[SEAL]

54 *Waiver of Rules Nisi and Stipulation of Counsel.*

In the District Court of the United States
For the Northern District of Georgia

In re J. WESLEY GLASGOW

Petition for Habeas Corpus.

The petitioner having filed his petition for habeas corpus, accompanied with exhibits, lettered from A to N, inclusive, "J" omitted, as part thereof, and having applied for a rule against W. H. Moyer, Warden of the United States Penitentiary at Atlanta, Georgia, to show cause why the writ should not issue, and now the said W. H. Moyer, Warden as aforesaid, appears in court by his counsel John W. Henley, assistant United States attorney for said district and waives the issuing of said rule nisi, and objects to the issuance and allowance of the writ of habeas corpus prayed, and for cause of objection says that said petition on the face thereof shows that the petitioner is not entitled in law to be discharged on the facts as alleged in said petition.

JOHN W. HENLEY,
Assistant U. S. Attorney.
Counsel for W. H. Moyer, Warden.

And said matter is now submitted to the court.

JOHN C. FAY,
Attorney for Petitioner.

JOHN W. HENLEY,
Asst. U. S. Atty.
Counsel for W. H. Moyer, Warden.

U. S. District Court
Filed in Clerk's Office Mar. 22, 1912.
O. C. FULLER, *Clerk.*
by J. D. STEWARD, *Dep.*

55 In the District Court of the United States
For the Northern District of Georgia.

In re J. WESLEY GLASGOW,

Petition for Habeas Corpus.

Opinion.

This is a petition for a writ of habeas corpus by the above named petitioner, to be directed to William H. Moyer, Warden of the United States Penitentiary at Atlanta, Georgia.

It appears from the application that the petitioner was indicted in the District Court of the United States for the District of Delaware on the 16th day of October, 1911, charged with depositing an obscene book in the United States mail. In December, 1911, the trial took place and the defendant was found guilty. A motion was made in arrest of judgment and for a new trial on December 21st, 1911, and on December 23d, 1911, the same was set for hearing on January 6th, 1912.

When the motion in arrest of judgment and the motion for a new trial came on to be heard the new Judicial Code, approved March 3d, 1911, had gone into effect, that is on January 1st, 1912, and the petitioner here had filed an affidavit under Section 21 of the new Judicial Code, setting up the disqualification of the Judge of the District Court for the District of Delaware, who had tried the case and who was then about to hear the motion in arrest and the motion for a new trial, and same was certified by counsel for petitioner. The Judge held that "in the judgment of the Court, whatever may be the applicability of the section to other cases differently circumstanced, it does not and was not intended by Congress to apply to this case at its present stage, and consequently there was no authority or justification for the filing of such an affidavit as that in question."

The Judge then proceeded to sentence the defendant to be fined
56 $500.00 and to be confined in the United States Penitentiary at Atlanta, Georgia for a term of fifteen months, beginning on the 6th day of January, 1912.

The penalty provided by the statute is a fine of "not more than five thousand dollars or imprisonment not more than five years, or both." The extent of the penalty is therefore clearly within the statute.

The question is first, whether or not the alleged error of the Judge in holding this affidavit ineffectual to stop the case at the stage it had reached, under all the circumstances, could have been taken up for review by the Circuit Court of Appeals, for the Third Circuit. Counsel urge that it could not because, as he states, there was no judge to certify the bill of exceptions or from whose judgment and action the writ of error could have been taken. The position, as I understand it, is that the moment the affidavit was filed the Judge became disqualified absolutely and any act of his thereafter, in the case, would have been void. I am unable to agree with counsel about this. There does not seem to me to be the slightest difficulty where the suggestion is made under this Section of the new Judicial Code, or otherwise, that a Judge is disqualified and he over-rules it and proceeds to try the case or to conclude it if he is engaged in trying it; so far as that action can be taken to the proper

appellate court for review, the Judge who tries the case can certify to what occurred on the trial for the purpose of allowing the same to be so reviewed.

This being true, the action of the Judge was such that it was reviewable, and errors of a judge in the trial of a case will not be considered by another court on habeas corpus.

But the real question in this case is whether or not, under Section 21 of the new Judicial Code, an affidavit such as provided for therein, can be filed after a case has been tried and there is a verdict, and where a motion in arrest and for a new trial has been made, and the attempt
57 by the affidavit is to disqualify the Judge from concluding the case, ruling on these motions and sentencing the defendant if he overruled them.

It will be observed from what has been said as to the dates applicable to this case at its various states, that the case had been tried and a verdict rendered before this new Judicial Code went into effect on January 1st, 1912. Now, can it be conceived that it was the purpose of Congress to apply this act to such a situation? The Section itself provides that such an affidavit shall be filed not less than ten days before the beginning of the term of the court or good cause should be shown for failure to file within that time.

The meaning of this Section is that the affidavit should be filed certainly before the trial of the case commences unless good reason to the contrary is shown. The act evidently contemplates that usually and generally such an affidavit shall be filed not less than ten days before the beginning of the term at which the trial shall take place. It would require some specific language in this act to satisfy me that Congress intended such an affidavit to be filed at the stage which had been reached in this case.

Besides this, as has been stated, all that was done in the case, including the action of the Judge with reference to the affidavit filed under Section 21, was a matter for review by the Circuit Court of Appeals on writ of error, and for the court here to pass upon these questions upon a writ of habeas corpus would clearly be beyond the proper scope and use of that writ.

A great deal is set out in the application with reference to other matters, the improper treatment of petitioner when he was arrested and confined in prison before trial, the route taken by the officers in bringing him to the penitentiary in Atlanta, and other matters not necessary to be referred to here. The right to have this writ issue on the face of it depends entirely, in my opinion, upon whether the affidavit under Section 21 of the new Judicial Code was applicable at this state of the proceedings and whether or not any errors that might have been committed were matters for review by the Circuit Court of Appeals for the Third Circuit. As my opinion is against the contention of counsel for petitioner on these two questions, no case is made in the application for the issuance of the writ. Of course none of us can tell yet exactly how
58 Section 21 of the new Judicial Code will be construed, but I do not see how it can ever be held applicable as presented to the District Court in Delaware in the present matter.

Where an application for a writ of habeas corpus fails to state a case wherein relief could be granted if the writ should issue, it is the duty of

the Court to deny the application. The application for the writ must be denied.

This 29th day of March, 1912.

WM. T. NEWMAN,
U. S. Judge.

U. S. District Court. Filed in Clerk's Office Mch. 30, 1912.
O. C. FULLER, *Clerk,*
by J. D. STEWARD, *Dep.*

59 In the District Court of the United States
For the Northern District of Georgia.

In re J. WESLEY GLASGOW,

Petition for Habeas Corpus.

Order Denying Writ.

This petition for habeas corpus coming on to be heard and having been argued and submitted, upon consideration thereof it is considered, ordered and adjudged by the Court that, the petition for the issuance of the writ showing no legal ground whatever for the discharge of the petitioner if such writ were issued, that the application for the writ of habeas corpus be, and the same is hereby, denied.

This 29th day of March, 1912.

WM. T. NEWMAN,
U. S. Judge.

U. S. District Court. Filed in Clerk's Office Mch. 30, 1912.
O. C. FULLER, *Clerk,*
by J. D. STEWARD, *Dep.*

60 In the District Court of the United States
For the Northern District of Georgia.

In re J. WESLEY GLASGOW,

Petition for Leave to File Appeal in Forma Pauperis.

J. Wesley Glasgow, being duly sworn, says that he is now unlawfully confined in the United States Penitentiary in Atlanta, Ga. and that he is without means to pay the necessary costs and is unable to give security for same for the purpose of an appeal to the United States Supreme Court from Hon. Wm. T. Newman's decision, Judge of the United States District Court for the Northern District of Georgia, refusing to grant a writ of habeas corpus, that all his property personal was seized by the United States upon his arrest and with the exception of his wearing apparel has not been restored to him and that he believes in good faith he is entitled to the redress he seeks by such appeal.

WHEREFORE, he prays the Court to permit him to apply for a writ in Forma Pauperis, as by law provided.

J. WESLEY GLASGOW [L.S.]

Subscribed and sworn to before
me this 6th day of April, 1912.
EDWARD S. CROFT [L.S.]
Notary Public, Fulton County, Georgia. [OFFICIAL SEAL]
Filed in Clerk's Office, April 22, 1912.
O. C. FULLER,
Clerk.

Approved,
WM. T. NEWMAN,
U. S. Judge.

61 In the District Court of the United States
For the Northern District of Georgia.

In re J. WESLEY GLASGOW,

Petitioner.

Notice of Appeal.

Comes now the petitioner in open Court by John C. Fay, his attorney, and gives notice of and takes an appeal from the judgment herein rendered on the 29th day of March, A. D. 1912 to the Supreme Court of the United States, under the provisions of Sec. 238 of the Judicial Code.

JOHN C. FAY,
Attorney for Petitioners.

WILLIAM A. WIMBISH
Of counsel.

Order.

Allowed in forma pauperis in open Court.
April 6th, 1912.

WM. T. NEWMAN,
U. S. Judge.

Service of Copy admitted this day of April, A. D. 1912.
F. C. TATE,
Attorney for Respondent.
Filed in Clerk's Office, April 6, 1912.
O. C. FULLER, *Clerk.*

62 In the District Court of the United States
For the Northern District of Georgia.

In re J. WESLEY GLASGOW.

Appeal.

The above named petitioner conceiving himself aggrieved by the decree made and entered on the 29th day of March, 1912, in the above entitled

cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

WILLIAM A. WIMBISH,
Attorney for Petitioner.

Dated this 22d day of April, A. D. 1912.

Order Allowing Appeal.

The foregoing claim of appeal is allowed.
Dated April 22, 1912.

WM. T. NEWMAN,
U. S. Judge.

U. S. District Court.
Filed in Clerk's Office April 22, 1912.
O. C. FULLER, *Clerk.*

63 In the District Court of the United States
For the Northern District of Georgia.

In re J. WESLEY GLASGOW.

Assignment of Errors.

The Petitioner prays an appeal from the final decree of this Court to the Supreme Court of the United States, and assigns for error:

First. That the Court erred in refusing to grant writ of habeas corpus on the following grounds: (*a*) That petitioner was deprived of his rights under Articles V and VI of the Amendments to the Constitution of the United States. (*b*) That heretofore, on or about the 21st day July, 1912 in the District of Delaware, petitioner was deprived of his personal property without warrant or other lawful process. (*c*) That before conviction or even indictment of the offense charged herein, petitioner was dressed in prison garb, prison rules enforced against him and arraigned in Court in said prison clothes.

(*d*) That the presiding Judge refused to permit a *dedimus potestatum* to issue in order to take the testimony of non-resident witnesses residing more than 100 miles from the place of trial.

64 (*e*) That the presiding Judge refused to allow witnesses residing within 100 miles of the place of trial to be summoned.

Second. That the Court erred in holding that the affidavit of counsel filed under provisions of section 21 of the new Judicial Code was not applicable in this case.

The petitioner prays that the judgment or decree denying writ of habeas corpus may be reversed and set aside and that this Court will order said writ of habeas corpus to be issued.

WILLIAM A. WIMBISH,
Petitioner's Attorney.

U. S. District Court.
Filed in Clerk's Office, April 22, 1912.
O. C. FULLER, *Clerk.*

65 *Citation.*

THE UNITED STATES OF AMERICA, *ss.*

THE PRESIDENT OF THE UNITED STATES,
To WILLIAM H. MOYER,

GREETING:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal, duly allowed by the District Court for the Northern District of Georgia, and filed in the Clerk's office of said Court on the 22d day of April, A. D. 1912; in a cause wherein J. Wesley Glasgow, petitioner, is appellant, and you are appellee, to show cause, if any, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the petitioner in that behalf.

WITNESS, the Honorable Edward D. White, Chief Justice of the United States this 24th day of April, A. D. 1912.

WM. T. NEWMAN,
U. S. Judge.

66 On this 25th day of April in the year of our Lord one thousand nine hundred and twelve, personally appeared Edward S. Croft, the subscriber, and makes oath that he delivered a true copy of the within citation to J. W. Henley, Assistant U. S. District Attorney for the Northern District of Georgia.

EDWARD S. CROFT [L.S.]

Sworn to and subscribed the 25th day of April, A. D. 1912.
O. C. FULLER,
Deputy Clerk.

67 In the District Court of the United States for the Northern Division of the Northern District of Georgia. At Atlanta, Georgia.

I, Olin C. Fuller, Clerk of the District Court of the United States for the Northern District of Georgia, do hereby certify that the above and foregoing 66 pages of printing and writing contain a true, full, correct and complete copy of the record, assignment of errors and the proceedings as designated by stipulation of counsel, in the matter of J. Wesley Glasgow, Petition for Writ of Habeas Corpus, as the same remain of record and on file in the clerk's office of the said Court, except that the original citation and return of service thereon is included therein in the stead of a copy.

In testimony whereof I hereunto set my hand and official seal this the 25th day of April, A. D. 1912.

OLIN C. FULLER,
Clerk.

[SEAL]

FILED.
MAY 2 1912
JAMES H. McKENNEY,
CLERK

1 8

IN THE

Supreme Court of the United States

J. WESLEY GLASCOW,
Appellant,
vs.
WM. H. MOYER, ET AL.,
Appellees.
No. 1123

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA DENYING A WRIT OF HABEAS CORPUS.

MOTION TO ADVANCE.

Comes now the appellant in open court and moves the Court to advance the above entitled case upon the docket of said Court and set the same for an early hearing, and assigns as reasons therefor:

FIRST. That the said appellant is now and has been confined in the United States Penitentiary at Atlanta, Ga., unlawfully, since the 8th day of January, 1912, under an illegal sentence, pronounced by the Judge of the United States District Court for the District of Delaware.

SECOND. Unless relieved from said unlawful imprisonment he will be still further confined for the period of fifteen months from the 6th day of January, 1912.

THIRD. That he has already been confined, first during his arrest, before indictment in the State Penitentiary in

Delaware, from the 25th of July, 1911, and has been continuously unlawfully confined since that date.

That the record in this case contains assignments of error in which are involved rights of the appellant under the Fourth, Fifth and Sixth Amendments of the Constitution, and the jurisdiction of the Court which tried him.

FOURTH. The record involves the construction of Sections 220 and 221 of the new judicial code.

FIFTH. That under the new judicial code, appellant contends that the United States District Judge of the District of Delaware is disqualified from signing a writ of error allowing an appeal or signing a Bill of Exceptions by reason of his having been disqualified from proceeding further in said case, and the judgment in that case cannot be reviewed except by this proceeding.

Wherefore, the appellant prays that said motion be granted.

JOHN C. FAY,
CHARLES COLDEN MILLER,
Attorneys for Appellant.